IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.164 OF 2006
WITH
CIVIL APPLICATION NO.225 OF 2006
WITH
CIVIL APPLICATION NO.226 OF 2006

Mr.Vijay S. Singh & Anr. ..Appellants.

V/s.

The Municipal Corpn. of Gr.Mumbai..Respondent.

Mr.Jagdish N.Jayale for appellants.

Mr.K.K.Singhavi with Mr.Ujjainwala S.H. &
Mr.Malandkar with Mrs.G. Joglekar for Respondent.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 13, 2006.

P.C. :

1. After hearing counsel for the parties for sometime, the appellants have accepted the offer made on behalf of the Corporation that instead of inviting any finding from this court at ad-interim stage, the appeal can be disposed of by allowing the appellants to cover the demolished portion of the suit structure which is exposed due to the demolition, by A.C.Sheet so as to protect it from all exposures and to safeguard the things and articles lying inside the house.

2. The respondent through counsel however,

states that the work to be so undertaken by the appellants in the first place should be at their own costs and all issues be kept open to be decided by the trial court in the Notice of Motion and further application to be taken out by the appellants, as may be advised with regard to the action of demolition which is put in issue in the cognate civil application filed with the appeal before this court. It is made clear that if the trial court finds that the demolition of the structure was done in undue haste and malafide then the concerned officer(s) will be liable to compensate the Appellant with the cost of restoration of the structure as well as repairs thereof.

3. The counsel for the appellants has accepted this offer without prejudice to the rights and contentions of the appellants in the pending suit and issues arising in relation to the action of demolition. All questions in that behalf are left open. It is clarified that this arrangement suggested by the Respondent or for that matter accepted by the Appellants is without prejudice to the rights and contentions of the parties.

4. Accordingly, appeal as well as civil

applications are disposed of with liberty to the appellants to take recourse to such additional application(s) before the trial court, for appropriate reliefs including to seek amendment of the plaint, if so advised. All questions in that behalf are left open.

5. This arrangement is arrived at in anticipation that the Notice of Motion pending before the trial court will be disposed of within one month from today. The Trial Court is directed to dispose of the said Notice of Motion by end of April, 2006. In the event, the appellants succeed in the said Notice of Motion, it will be open to the appellants to seek appropriate direction from the trial court to allow the appellants to put up the structure to its original position on such term as may be directed by the trial court. All questions in that behalf are left open.

6. It is made clear that if the appellants fail in the Notice of Motion, it will be open to the trial court to pass such order, as may be advised, of removal of structure, as the appellants have given assurance to this court through their counsel as well as appellant No.1, who is personally present in the

court, that the structure presently standing as well as the additional work that will be undertaken by the appellants in terms of the liberty granted as per the arrangement recorded earlier will be removed by the appellants at their costs so as to remove the structure forthwith in terms of directions of the trial court.

7. Ordered accordingly.

8. Although the Appeal is disposed off, the same be listed under caption "direction" on March 23, 2006 in terms of order dated March 8, 2006.